BEFORE

THE PUBLIC SERVICE COMMISSION

OF SOUTH CAROLINA

DOCKET NO. 2020-63-E

IN RE:	)	
	)	
Petition of Bridgestone Americas Tire Operations, LLC for an Order Compelling Dominion Energy South Carolina, Inc. to Allow the Operation of a 1980 kW AC Solar Array	)	**DOMINION ENERGY SOUTH CAROLINA, INC.'S PROPOSED ORDER DENYING PETITION AND MOTION TO STRIKE**
	)	

OVERVIEW OF THE MATTER

This matter comes before the Public Service Commission of South Carolina (the "Commission") pursuant to the Petition (the "Petition") filed by Bridgestone Americas Tire Operations, LLC ("BATO") on February 14, 2020. The Petition seeks an order from the Commission permitting BATO to operate a utility-scale 1.98 megawatt ("MW") solar generating facility (the "Generating Facility"). Specifically, the Petition requests that this Commission either (i) declare that the Generating Facility is exempt from the Commission-approved interconnection standards in the South Carolina Generator Interconnection Procedures, Forms, and Agreements (the "South Carolina Standard") or (ii) issue a waiver of the South Carolina Standard to BATO to allow BATO to leapfrog the other projects in the state interconnection queue that submitted interconnection applications before BATO's.[1]

For the reasons set forth below, the Commission denies the Petition and orders that the Generating Facility proceed under the South Carolina Standard.

[1] Initially, BATO requested in the Petition a waiver to operate without processing or studying its Generating Facility under the South Carolina Standard. However, BATO requested in its pre-trial brief and during its closing arguments that it be granted a waiver allowing it to move to the front of the interconnection queue so it could be processed ahead of similarly-situated projects.

Lastly, after testimony was submitted in this docket, and prior to the hearing, BATO submitted a Motion to Strike (the "Evidentiary Motion") on July 17, 2020. For the reasons set forth below, the Evidentiary Motion is also denied.

BACKGROUND

BATO is a large industrial customer of DESC, and DESC supplies power to BATO pursuant to an Electric Service Contract, dated January 12, 2009 (the "Service Contract"). The Service Contract was approved by the Commission in Order No. 2009-102. Given the magnitude of BATO's electric load under the Service Contract, BATO is directly connected to the DESC transmission system—which contains assets comprising the Bulk Electric System ("BES")—via a 115 kilovolt ("kV") transmission line. The transmission line serving BATO contains a complex automatic switching scheme in order to improve electric service restoration of the BATO facility in the event of a fault. The record indicates that this configuration is non-standard—even for industrial customers with larger loads like BATO.

In February 2018, BATO submitted an interconnection application[2] for the Generating Facility pursuant to the requirements of the South Carolina Standard, and it was placed in the interconnection queue at position 375.[3] The South Carolina Standard requires that any generator seeking "interconnection and parallel operation" with the DESC system in South Carolina must be processed in accordance with the South Carolina Standard.[4] The South Carolina Standard was developed pursuant to the South Carolina Distributed Energy Resource Act ("Act 236"), and

[2] BATO initially submitted an interconnection application for the project in 2017, but the application was withdrawn due to BATO's inactivity.
[3] As evidenced by the BATO interconnection application submitted in February 2018, DESC and BATO acknowledged that the Generating Facility's interconnection application would be processed in accordance with the South Carolina Standard.
[4] Section 1.1.1 of the Procedures in the South Carolina Standard (the "Procedures").

was a product of a stakeholder process, which included Duke Energy Carolinas, LLC, Duke Energy Progress, LLC, DESC, the South Carolina Office of Regulatory Staff ("ORS"), South Carolina Solar Business Alliance (the "SCSBA"), Southern Alliance for Clean Energy, Interstate Renewable Energy Council, and numerous solar developers. The Commission approved the South Carolina Standard in Order No. 2016-191, and noted that the South Carolina Standard "will allow for the safe and reliable interconnection of distributed energy in South Carolina."[5] The South Carolina Standard ensures safety and reliability by mandating a study and review process for generators—whether behind the meter or otherwise—seeking to interconnect to utility systems in South Carolina.[6]

Shortly after submitting the interconnection request under the South Carolina Standard for the Generating Facility in February 2018, BATO contacted the ORS for assistance in the dispute regarding the applicability of the South Carolina Standard to the Generating Facility.[7] The record indicates that this marked the beginning of a years'-long period of time in which DESC and the ORS engaged with BATO to ensure that the Generating Facility would be processed in accordance with the South Carolina Standard.[8] Despite the stated positions of DESC and the ORS, BATO forged ahead with construction of the Generating Facility, which was completed in October 2018, at a cost of approximately $2,700,000. All the while, DESC continued to study and review projects that submitted interconnection requests prior to the Generating Facility's. Indeed, DESC's late-filed Hearing Exhibit No. 14 indicates that there are still at least 31 projects in DESC's interconnection queue that must be studied under the South

[5] Order No. 2016-191 at 9.
[6] *See id*.
[7] *See* DESC's Prehearing Brief at 4.
[8] BATO Witness Freeman and DESC Witness Raftery both indicated that the ORS provided its non-binding opinion to both parties in which it stated its belief that the South Carolina Standard applied to the Generating Facility.

Carolina Standard prior to the time DESC would be permitted to study the Generating Facility. Now, BATO seeks either a waiver of these queuing requirements, or an exemption from the South Carolina Standard entirely.

SUMMARY OF THE BASIS FOR THE COMMISSION'S CONCLUSIONS

I. The Generating Facility will interconnect and operate in parallel with the DESC system.

The South Carolina Standard contains two threshold criteria for applicability—"interconnection and parallel operation."[9] As demonstrated below, the record in this docket indicates that the Generating Facility will do both.

A. The Generating Facility will interconnect with the DESC system.

The Commission heard a great deal of testimony from BATO's and DESC's witnesses on the topic of interconnection, and whether the Generating Facility interconnects to the DESC system in the manner contemplated by the South Carolina Standard. Both parties agree that the BATO manufacturing plant is interconnected to the DESC system via a 115 kV transmission line. It is also undisputed that the electricity supplied by DESC and the Generating Facility—as well as BATO's electric load—all come together at a common bus, or node, within the BATO facility. DESC introduced an exhibit as part of DESC Witness Xanthakos's testimony which illustrates this common bus at which these elements all connect. However, this is where the agreement between the parties ends. BATO argues that the Generating Facility is not interconnected to the DESC system because it is only indirectly connected via a bus owned by BATO.[10] Alternatively, BATO Witness McGavran testified that that the Generating Facility is not interconnected because BATO's electric load at its manufacturing facility exceeds the

[9] Section 1.1.1 of the Procedures.
[10] *See* Petition.

capacity of the Generating Facility even during light load periods.[11] As a fallback position, BATO argues that even if the Generating Facility is interconnected, DESC can take comfort in the fact that BATO installed reverse relay protections to protect DESC's system.[12] On the other hand, DESC argues that these justifications cited by BATO are of no consequence given that the South Carolina Standard does not delineate between a direct or indirect connection, does not tie interconnection to a function of load or protective equipment, and likewise contains no requirements that interconnection must occur at a bus owned by DESC.[13]

Although BATO claims that these relays mean the Generating Facility will have "no chance of ever having any impact on the utility grid,"[14] the necessity for these devices illustrates the very point which DESC argues—the Generating Facility and the DESC system are connected in a way that power can flow freely between the same. Likewise, the Commission heard testimony from DESC Witness Xanthakos at the hearing that if the reverse power relays failed and the BATO facility were to lose power —such as during a hurricane—the Generating Facility could push power back onto the DESC system.

Therefore, it appears that the Generating Facility and the DESC system are interconnected in a way that can influence the safety and reliability of the DESC system, regardless of where the interconnection occurs, or who owns that point of interconnection. Thus, the Generating Facility is interconnected to the DESC system as contemplated by the South Carolina Standard.

B. The Generating Facility will operate in parallel with the DESC system.

[11] *See* McGavran Direct Testimony, June 9, 2020.
[12] *See* Petition; McGavran Direct Testimony, June 9, 2020.
[13] *See* DESC's Prehearing Brief.
[14] McGavran Direct Testimony 11:3-4, June 9, 2020.

Likewise, the Commission heard testimony regarding another term in the South Carolina Standard—"parallel operation."[15] BATO Witness McGavran argues that the Generating Facility does not operate in parallel with the DESC system given that "it is far removed electrically" from the DESC system and all "load from the [Generating Facility] is delivered to the facility directly."[16] On the other hand, DESC takes a different position, noting that the two systems (DESC's and BATO's) are not "far removed" from each other and are actually inextricably linked given that the electricity supplied by each will be used to supply BATO's electric load in concert with the other.[17] DESC argues that this coordinated service of BATO's electric load means that the power supplied by the Generating Facility would need to "sync or match"[18] the power supplied by DESC to ensure the safety and reliability of both systems, especially. On this point, DESC provided testimony drawing a contrast against stand-by generators, which—unlike the Generating Facility—only operate while the DESC system is not supplying power to serve the common electric load.[19] DESC indicated that these standby generators are not subject to the South Carolina Standard because they are not interconnected and operated in parallel with the DESC system.[20] DESC argues that as a result, the safety and reliability concerns are mitigated given that such generators are not continuously supplying power to the same electric load in concert with DESC.[21]

The Commission finds that the DESC system and the Generating Facility will operate in parallel given that they each directly connect to the same bus within the BATO facility and will

[15] Section 1.1.1 of the Procedures.
[16] McGavran Direct Testimony 12:2-4, June 9, 2020.
[17] *See* Xanthakos Direct Testimony, June 30, 2020.
[18] DESC's Prehearing Brief at 5.
[19] *See* Furtick Surrebuttal Testimony, July 14, 2020.
[20] *See id*.
[21] *See id*.

serve BATO's electric load simultaneously via a confluence of power. The dangers inherent in such an operation are precisely why the South Carolina Standard was developed, and it ensures that these arrangements are processed under the study and review procedures therein. In this way, the Commission is able to ensure the safety and reliability of not only DESC's and BATO's system, but also the Bulk Electric System (the "BES") as a whole. The Generating Facility is clearly not the type of stand-by generation upon which the parties agree is not subject to the South Carolina Standard because it will continuously operate while DESC is supplying power to the BATO facility. Likewise, the Generating Facility is not "islanded" given that it ties into equipment powered by electricity from DESC. In fact, it appears the Generating Facility itself is powered, at least in part, by electricity supplied by DESC.

Additionally, the Commission notes that it cannot account for BATO's situation in isolation. Rather, it must consider the consequences on a system-wide level. The Commission can think of no better way to undercut the very core of the South Carolina Standard—safety and reliability—than by setting a precedent which would permit generators across the state to supply power in confluence with the utility without undergoing the study and review process provided in the South Carolina Standard. The record indicates that these situations could result in faults or power quality issues on the DESC system.[22] The safety and reliability of the DESC system—as well as the safety of DESC's customers and employees—would be jeopardized by any such decision.

II. The South Carolina Standard applies to the Generating Facility regardless of whether it exports power to DESC.

[22] *See*, *e.g.*, Furtick Direct Testimony.

BATO and the South Carolina Coastal Conservation League ("CCL") rely heavily on a jurisdictional clarification in the order approving the South Carolina Standard—Order No. 2016-191—to argue that such clarification actually imposes a limitation on the express language of the South Carolina Standard.[23] . Specifically, the order states that the South Carolina Standard applies to generators "requesting to interconnect to a South Carolina utility's system and to either net meter or sell its full output to the interconnecting utility."[24] DESC argues that this merely delineates jurisdiction between the Commission and the Federal Energy Regulatory Commission (the "FERC"), and is not a limitation placed upon the South Carolina Standard. In support of its position at hearing, DESC pointed to language in the Joint Application ("Joint Application") submitted to the Commission in Docket No. 2015-362-E by DESC, Duke Energy Carolinas, LLC, and Duke Energy Progress, LLC that requested approval of the South Carolina Standard. Specifically, the language from the Joint Application cited by DESC at hearing states that "[i]nterconnection of generators that sell some or all of its electricity to an entity other than the interconnecting utility is subject to FERC regulation."[25]

Contrary to BATO's position, the South Carolina Standard contains no requirement that a generator must "net meter or sell its full output" to the interconnecting utility in order to be subject to its provisions. It is axiomatic that the sale of power to a utility is considered a wholesale power sale or a "sale-for-resale" that places such a transaction squarely within jurisdiction of the FERC.[26] However, the interconnection of net-energy metering projects and projects under PURPA where 100 percent of the output is sold to the host utility have been

[23] *See* BATO's Prehearing Brief; CCL's Prehearing Brief.
[24] Order No. 2016-191 at 5-6.
[25] Joint Application at 5, fn. 3.
[26] 16 U.S.C. § 824(d).

carved out and placed under state jurisdiction.[27] This is a fundamental principle that is irrefutable, and the language in Order No. 2016-191 is meant to clearly delineate the jurisdictional allocation between the FERC and the Commission.[28] Likewise, although the language appears in the Joint Application and Order No. 2016-191, it simply serves as a jurisdictional guidepost, and does not serve to limit the express language of the South Carolina Standard. As such, the South Carolina Standard applies to all generators that interconnect and operate in parallel with the DESC system—regardless of whether they choose to net meter or export power back to the utility. The mere fact that BATO chose not to sell power to DESC does not mean that it can avoid the South Carolina Standard.[29]

III. The Commission does not find good cause to grant BATO a waiver of the South Carolina Standard.

BATO argues in the alternative that if the Generating Facility is subject to the South Carolina Standard, that the Commission should grant a waiver of the same. It appears that BATO's desired waiver would essentially permit it to jump to the front of the line in DESC's state interconnection queue and proceed immediately under the study and review processes of the South Carolina Standard.

Initially, the Commission notes that the state interconnection queue which BATO seeks to leapfrog is a product of the South Carolina Standard. DESC's management of its state interconnection queue must abide by the provisions of the South Carolina Standard.

[27] *See*, *e.g.*, *MidAmerican Energy Company*, 94 FERC 61,340 (2001).
[28] On this point, BATO argues that the Generating Facility is subject to neither the South Carolina Standard nor FERC jurisdiction. Although the Commission cannot properly decide the issue of FERC jurisdiction, the issue is moot given that the Generating Facility falls within the South Carolina Standard.
[29] Although BATO attempts to characterize the Generating Facility as a project of first impression for DESC, the record indicates that DESC has processed several other projects under the South Carolina Standard that do not sell power back to DESC.

Specifically, the South Carolina Standard requires that DESC assign queue numbers to projects in the order in which such interconnection applications are received.[30] These queue numbers are retained by the projects as they progress through the South Carolina Standard.[31] These queue numbers are important to the administration of interconnection in the State of South Carolina because they determine certain costs are correctly allocated among projects and that projects are studied in the order in which their interconnection application was received.[32] In this way, utilities in South Carolina ensure that interconnection applications are processed in a fair, non-discriminatory manner.

DESC Witness Hammond offered testimony to the Commission on this very point. At the hearing, DESC Witness Hammond described the thousands of projects (including rooftop solar) that DESC has processed in accordance with the South Carolina Standard. DESC Witness Hammond also stated that since BATO's submission of its interconnection application in February 2018, DESC has been diligently processing the solar projects ahead of BATO in the queue via the study and review requirements of the South Carolina Standard, but the sheer volume of requests along with projects seeking to delay processing by filing motions to maintain status quo have caused delays. Indeed, as evidenced by a late-filed exhibit submitted at the request of the Commission, the projects which DESC is currently studying pre-date BATO's interconnection request.[33] It is DESC's position that BATO's wait in the queue is simply a function of DESC's fair, non-discriminatory application of the interconnection queue and that DESC cannot issue a waiver of these requirements to BATO. DESC argues that such a waiver

[30] *See* Section 1.6 of the Procedures.
[31] *Id*.
[32] *See* "Queue Number" in the SC Glossary of Terms in the South Carolina Standard.
[33] *See* Late-Filed Hearing Exhibit No. 14.

would be discriminatory to other projects in the queue and would not rise to the level of public interest seen in corresponding waivers issued by the FERC, or promote the safety and security of the BES—a critical issue for the Executive Branch.

In contrast, BATO argues that the South Carolina Standard imposes a "labyrinthine" interconnection process that is responsible for a stranded $2,700,000 Generating Facility.[34] As such, BATO declares that a waiver would be in the "public interest" given that (i) "no other party will be prejudiced by permitting BATO to operate the [Generating Facility]" and (ii) such a waiver would promote renewable generation in South Carolina.[35] BATO Witness Cannon further testified that a waiver would permit BATO to begin recouping on its investment in the Generating Facility, while promoting a culture of sustainability within BATO.[36]

The Commission finds no such public interest that would permit it to issue a waiver to BATO. Although the Commission understands BATO's desire to recoup on its investment in the Generating Facility, the mere fact that the Generating Facility has already been constructed is an insufficient basis upon which to grant a waiver and providing a waiver on such basis would great perverse incentives going forward—particularly given that BATO continued with construction after being informed by DESC that the Generating Facility would be subject to the South Carolina Standard.[37] Likewise, BATO's desire to achieve certain corporate sustainability goals does not reach the level of public interest required for a waiver given that the record indicates that the Generating Facility would essentially benefit one entity—BATO. BATO's argument

[34] Cannon Rebuttal Testimony 3:17, July 7, 2020.
[35] BATO's Prehearing Brief at 13.
[36] *See* Cannon Rebuttal Testimony, July 7, 2020.
[37] Hearing Exhibit No. 9 indicates that BATO proceeded with construction even after being told by Daniel F. Kassis, Vice President, Customer Relations & Renewables for DESC, that "interconnection of the [Generating Facility] is prohibited."

that a waiver would promote renewable energy in South Carolina is belied by the fact that every project it seeks to leapfrog in the DESC state interconnection queue is a solar generator. Indeed, the SCSBA submitted a letter (the "SCSBA Letter")[38] in this docket on behalf of its members—which include utility-scale solar developers—to urge the Commission not to favor BATO given its "members rely on the impartiality of the local regulatory system to provide fair and equal treatment under the law."[39]

As such, BATO's claim that such a waiver would be without prejudice to any other party is not supported by the evidence in the record. BATO's assertion implies that DESC could study BATO at this very second without allocating resources away from other projects. There is no such evidence in the record. If the Commission were to grant a waiver, surely DESC would necessarily divert resources from a project currently under study to perform the same studies on the Generating Facility. In short, the Commission is unable to grant a waiver because it would favor BATO over other projects in the queue in violation of the South Carolina Standard given that BATO has demonstrated neither a public interest nor a national security objective that would be achieved by such a waiver.

IV. Absent an exemption or waiver issued by the Commission, operation of the Generating Facility outside of the South Carolina Standard would violate the Service Contract.

DESC has supplied power for over a decade to the BATO facility via the Service Contract. Just like the South Carolina Standard, the Service Contract contains provisions relating to safety and reliability of the DESC system. Specifically, Section III.G of the Terms and Conditions incorporated into the Service Contract provides that:

[38] The Commission takes judicial notice of the SCSBA Letter pursuant to S.C. Code Ann. Reg. 103-846.
[39] SCSBA Letter at 1.

> Electricity supplied by [DESC] shall not be electrically connected with any other source of electricity without reasonable written notice to [DESC] **and agreement by the parties of such measures or conditions**, if any, as may be required for **reliability** of both systems.
>
> (emphasis added).

This provision has garnered the attention of the parties given that the electricity supplied by DESC would be electrically connected to the Generating Facility (i.e., another source of electricity). Although it appears the parties initially agreed to process the Generating Facility in accordance with the South Carolina Standard, that agreement clearly no longer exists. DESC argues that the Generating Facility's operation outside of the South Carolina Standard would violate the Service Contract given that DESC is required to study the Generating Facility thereunder and there for there is no agreement. As such, DESC argues that the study and review process under the South Carolina Standard is the mechanism by which the parties agreed to ensure the reliability of both systems. BATO argues that the Service Contract provides adequate safety and reliability measures to DESC outside of the South Carolina Standard, and the Generating Facility will "fully protect" DESC's equipment, particularly since BATO installed reverse power flows.[40]

These provisions in the Service Contract echo the tenets of safety and reliability that are fundamental to the South Carolina Standard, especially when a generator will flow power in confluence—or in parallel—with the DESC system. The inherent dangers in such an arrangement necessitate similar protections in the Service Contract. However, the terms and provisions of the Service Contract must work in conjunction with Commission rules and it

[40] Cannon Rebuttal Testimony 3:10, July 7, 2020.

cannot disregard express Commission rules, requirements, and procedures—including the South Carolina Standard. Therefore, the terms of the Service Contract cannot be manipulated by BATO in order to circumvent the South Carolina Standard.

V. S.C. Act No. 62 of 2019 ("Act 62") does not repeal the South Carolina Standard.

BATO argues that even if the South Carolina Standard previously applied to the Generating Facility, the enactment of Act 62 in May 2019 "repealed" the South Carolina Standard such that the Generating Facility must no longer comply with its requirements.[41] BATO points to Act 62's directive that the Commission "promulgate and periodically review standards for interconnection and parallel operation" as somehow repealing the South Carolina Standard entirely.[42] This would necessarily mean that projects currently in DESC's state interconnection queue could also bypass the South Carolina Standard entirely. This argument defies logic. Act 62 simply directs the Commission to periodically review interconnection requirements for state-jurisdictional interconnections. As such, the Commission has established Docket No. 2019-326-E where BATO is free to advocate for interconnection reform. However, the current South Carolina Standard remains effective in this state until such time as those reforms are enacted.

VI. The Evidentiary Motion mischaracterizes the facts and fails to consider that the Commission is similar to a jury of experts and is entitled to weigh the evidence.

Finally, the Commission notes that the Evidentiary Motion remains pending before the Commission. As an initial matter, it is important to note that many of the concerns upon which rules of evidence are based are inapplicable as it relates to matters before the Commission given

[41] BATO's Prehearing Brief at 9.
[42] S.C. Code Ann. § 58-27-460(A)(1).

that, unlike a jury, the Commission is considered a panel of experts.[43] The Commission "is entitled to hear testimony and give that testimony whatever weight it deems appropriate during the courts of the hearing."[44] The Commission may hear such testimony if it is "reasonable and prudent" to do so.[45]

It is with this background that the Commission reviews the Evidentiary Motion, which mainly seeks to strike three lines of testimony that were introduced in DESC's pre-filed testimony. For the reasons set forth below, the Evidentiary Motion is denied.

A. DESC Witness Raftery's testimony does not relate to confidential settlement negotiations and is not hearsay.

The Evidentiary Motion seeks to strike DESC Witness Raftery's pre-filed direct testimony, apparently, in its entirety.[46] DESC Witness Raftery's testimony discusses, among other things:

- DESC's efforts to inform BATO precisely why DESC must process the Generating Facility under the South Carolina Standard.
- An investigation by the ORS that was initiated by BATO's outreach to the ORS in early 2018.
- A meeting at which the ORS presented the findings of its investigation to DESC and BATO and concluded that it agreed with DESC that the Generating Facility should be processed in accordance with the South Carolina Standard.

The Evidentiary Motion seeks to strike this testimony upon several grounds. First, the Evidentiary Motion characterizes DESC Witness Raftery's testimony as describing "confidential settlement negotiations" in violation of South Carolina Rule of Evidence ("SCRE") 408.[47]

[43] *See, e.g.*, *Hamm v. South Carolina Public Service Com'n*, 422 S.E.2d 110 (S.C. 1992).
[44] *Id*.
[45] *Id*.
[46] *See* Evidentiary Motion.
[47] *Id*. at 3.

Second, the Evidentiary Motion argues that such testimony should be struck from the record given that "Witness Raftery concedes that he was not present during the negotiations with the ORS."[48] Lastly, the Evidentiary Motion argues that DESC Witness Raftery's testimony is simply hearsay and "incorrect."[49] However, as explained below, the record indicates that the Evidentiary Motion is grounded in inaccuracies.

The Commission does not view DESC Witness Raftery's testimony as detailing confidential settlement negotiations between DESC and BATO. In interpreting SCRE Rule 408, South Carolina courts have time and again noted that the fundamental principle underlying the rule is that "compromises are favored and evidence of an offer or attempt to compromise or settle a matter in dispute cannot be given in evidence against the party by whom such offer or attempt was made."[50] However, evidence may be admitted where the evidence in question does not disclose statements or discussions made in "manifest contemplation of a compromise and with a view toward mutual concessions."[51] DESC Witness Raftery's testimony lacks any evidence of negotiations or discussions with BATO that show an attempt to compromise or mutually concede anything. Nowhere in DESC Witness Raftery's testimony does he detail an exchange of proposed mutual concessions or an attempt by either party to compromise their position.

Likewise, the discussions among BATO, DESC, and the ORS were not "confidential settlement discussions" given that these discussions occurred during a specially-convened meeting held by the ORS so that the ORS could inform the parties that it believed the South Carolina Standard applied to the Generating Facility. During the course of its investigation, the

[48] *Id*.
[49] *Id*. at 4.
[50] *Hunter v. Hyder*, 114 S.E.2d 493, 497 (S.C. 1960).
[51] *Hall v. Palmetto Enterprises II, Inc., of Clinton*, 317 S.E.2d 140, 143 (S.C. App. 1984).

ORS—a third party—received substantial details as to the configuration of the BATO facility, the Generating Facility, and the DESC system.

Additionally, contrary to the assertion in the Evidentiary Motion that DESC Witness Raftery's testimony is simply "incorrect" as to the statements regarding the ORS, BATO Witness Freeman stipulated at hearing that the ORS had in fact supported DESC's position and relayed the same to BATO and DESC. Likewise, DESC Witness Raftery's testimony makes clear that he was present at the meeting on June 26, 2018, with the ORS. Lastly, the Commission will not classify this testimony as hearsay given that DESC Witness Raftery's testimony is supported by the record on these points and serves as a foundation for DESC's behavior—the steadfast insistence that the South Carolina Standard applies to the Generating Facility—for the better part of the previous two years. The testimony is thus not offered for the truth of the matter asserted. As such, BATO's request to strike DESC Witness Raftery's testimony is denied.

B. The SCSBA Letter in this docket is admissible evidence.

The Evidentiary Motion seeks to strike portions of DESC Witness Raftery's and DESC Witness Xanthakos's testimony regarding the SCSBA Letter. Although the SCSBA Letter does not advocate for either of the parties, it does urge the Commission to "provide fair and equal treatment under the law" and "not impair or discriminate against solar facilities that currently reside in the interconnection queue."[52] It appears that DESC Witness Raftery and DESC Witness Xanthakos cite the SCSBA Letter in their pre-filed testimony to demonstrate that the effects of the Commission's decision in this docket will not take place in a vacuum, and will impact a multitude of interested parties throughout the state of South Carolina, including the

[52] SCSBA Letter at 1 and 2.

developers and industry-participants comprising the SCSBA. Far from "rank hearsay,"[53] the SCSBA Letter was submitted in this very docket, and the Commission is able to take judicial notice of the same, regardless of whether DESC ever mentioned it in testimony or otherwise.[54] As such, and as noted above, the Commission hereby takes judicial notice[55] of the SCSBA Letter and denies BATO's request to strike DESC testimony regarding the same.

C. DESC's testimony does not contain improper legal conclusions.

Lastly, the Evidentiary Motion seeks to exclude testimony of DESC Witness Raftery, DESC Witness Hammond, DESC Witness Furtick, and DESC Witness Xanthakos related to DESC's interpretation and application of the South Carolina Standard—the very issue around which the case revolves. Although the Evidentiary Motion repeatedly cites the dangers arising to a "jury" if such testimony was admitted given that it is offered by "lay witnesses," it omits a critical distinction here—the Commission is akin to a jury of experts.[56] As such, the Commission views SCRE Rule 702 as permissive, and has held that "this rule does not bar opinion testimony by lay witnesses."[57] As discussed above, the Commission "is entitled to hear testimony and give that testimony whatever weight it deems appropriate during the courts of the hearing."[58] The Commission may hear such testimony if it is "reasonable and prudent" to do so.[59] Additionally, SCRE Rule 702 makes clear that "[t]estimony in the form of an opinion or inference otherwise

[53] Evidentiary Motion at 6.
[54] *See* S.C. Code Ann. Reg. 103-846; *IN RE: Application of Carolina Water Service, Inc. for Adjustment of Rates and Charges and Modification to Certain Terms and Conditions for the Provision of Water and Sewer Service*, 2018 WL 2365702 (S.C.P.S.C. 2018) (taking judicial notice of docket files).
[55] Counsel for DESC requested at hearing that the Commission take judicial notice of the SCSBA Letter.
[56] *See*, *e.g.*, *Hamm* (S.C. 1992).
[57] Commission Order No. 2009-104 issued in Commission Docket No. 2008-196-E on February 27, 2009.
[58] *Id*.
[59] *Id*.

admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact."[60]

If the Commission were to strike all of DESC's testimony regarding its interpretation and application of the South Carolina Standard—as the Evidentiary Motion would have it do—it is hard to imagine how the Commission could form a complete record upon which to make a decision, not only in this docket, but also in similar dockets going forward. Here, the above-referenced witnesses offered by DESC have personal knowledge of the South Carolina Standard and DESC's application of the same, along with DESC's administration of its retail contracts given that the witnesses either (i) participated in the development of the South Carolina Standard, (ii) implement the South Carolina Standard on a regular basis on behalf of DESC, or (iii) administer the Service Contract. The Commission's consideration of this testimony is reasonable and prudent given that (i) these witnesses testify to the very issues in dispute and (ii) the Commission's own precedent permits the consideration of this testimony given that the Commission is akin to a jury of experts. As such, the Commission denies BATO's request to strike this portion of DESC's testimony from the record.

CONCLUSIONS OF FACT AND LAW

1. The Commission has jurisdiction over DESC as a utility operating in the State of South Carolina.
2. The Commission has jurisdiction over BATO via the interconnection application for the Generating Facility submitted under the South Carolina Standard.
3. The Commission has jurisdiction over DESC and BATO via the Service Contract.

[60] SCRE Rule 702.

4. The South Carolina Standard and the Service Contract were approved by the Commission.

5. The South Carolina Standard contains the safety and reliability requirements applicable to generators that seek to interconnect and operate in parallel on a utility's system, regardless of whether they net energy meter or sell power back to the interconnecting utility.

6. The Commission has the authority to waive the South Carolina Standard if such a waiver is in the public interest.

7. The Commission sits as a jury of experts and is entitled to weigh the evidence before it as it deems appropriate.

8. The Generating Facility will interconnect and operate in parallel with the DESC system.

9. A waiver to permit the Generating Facility to move to the front of the state interconnection queue mainly, if not exclusively, benefits BATO.[61]

10. Given the inherent danger of parallel operation with a utility's system, the Service Contract echoes the same safety and reliability requirements as the South Carolina Standard.

11. The Service Contract cannot be used as a mechanism through which DESC and BATO avoid the mandatory requirements of the South Carolina Standard.

12. Act 62 did not, either expressly or implicitly, repeal the South Carolina Standard.

[61] In submitting this proposed order, DESC maintains that the South Carolina Standard applies to the Generating Facility and a waiver is not in the public interest. Should a waiver be granted, DESC requests the Commission grant BATO a limited waiver to move to the front of the state interconnection queue in order for DESC to study and review the Generating Facility pursuant to Section 4 of the South Carolina Standard.

13. DESC's testimony is reasonable and prudent for the Commission to consider given that it is based upon the personal knowledge of its witnesses and is supported by the record.

In light of these conclusions, and having carefully considered the issues raised by the parties, the Commission hereby orders that the Generating Facility be processed in accordance with the South Carolina Standard, and the Commission denies BATO's request for a waiver of the same.

Now, therefore, for the reasons set forth herein, the Petition and the Evidentiary Motion are denied.

IT IS HEREBY ORDERED.

BY ORDER OF THE COMMISSION:

_____
Comer H. Randall, Chairman

ATTEST:

_____
Florence P. Belser, Vice Chair
(SEAL)